

REMARKS

Claims 1-17 and 19-44 are pending in this application. The undersigned representative respectfully requests reconsideration and allowance of these claims in view of the following remarks.

Rejection under 35 U.S.C. §102

The Office Action has rejected claims 1-17 and 19-44 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 7,177,838 to Ling (hereinafter “the ‘838 patent”). The undersigned representative respectfully traverses the rejection.

The undersigned representative respectfully submits that the ‘838 patent does not qualify as prior art under 35 U.S.C. §102(e) because the inventive entity of the present application is not different from the inventive entity of the ‘838 patent and because the present application is a continuation-in-part of the ‘838 patent. 35 U.S.C. §102(e) recites: A person shall be entitled to a patent unless -

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(Emphasis added). MPEP §706.02(a)(II)(B) and §706.02(f) further emphasizes that “[i]n order to apply a reference under 35 U.S.C. §102(e), the inventive entity of the application must be different than that of the reference.” (Emphasis added).

The undersigned representative submits that the inventor of the ‘838 patent and the present application is the same inventive entity. As seen on the coverage of the ‘838 patent, the sole inventor is Marvin T. Ling of Scottsdale, Arizona. The present application also lists only one inventor on the coverage of the published application (U.S. Pub. No. 2002/0111907): Marvin T. Ling of Scottsdale, Arizona. Additionally, both the Transmittal Letter for Original Application of the ‘838 patent and the Transmittal Letter for Original Application of the present

application identify the sole inventor as Marvin T. Ling of 7676 East Tuckey Lane, Scottsdale, Arizona, 85250. Since the '838 patent was not granted on an application for patent by another, the '838 patent has been improperly identified as prior art under 35 U.S.C. §102(e) and does not anticipate the claims of the present application. Thus, the undersigned respectfully requests the withdrawal of the 35 U.S.C. §102 rejection.

In view of the above, the undersigned representative respectfully submits that the present application is in condition for allowance and a Notice to that effect is earnestly solicited. If it is determined that a telephone conversation would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned representative at the number given below.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application. The undersigned representative authorizes the

As the undersigned representative's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, the undersigned representative's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by the undersigned representative that such assertions are accurate or such requirements have been met, and the undersigned representative reserves the right to analyze and dispute such in the future.

Commissioner is authorized to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 9050.002.PCUS00.

Respectfully submitted,

___/Michael J. Dimino/___

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